

FAR Clause 52.213-4, Terms and Conditions--Simplified Acquisitions
(Other Than Commercial Items) (February 2006)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

- | | |
|---|--|
| <p>(1) The clauses listed below implement provisions of law or Executive order:</p> <p>(i) 52.222-3 Convict Labor (June 2003) (E.O. 11755).</p> <p>(ii) 52.222-21 Prohibition of Segregated Facilities (Feb 1999) (E.O. 11246).</p> <p>(iii) 52.222-26 Equal Opportunity (Apr 2002) (E.O. 11246).</p> <p>(iv) 52.225-13 Restrictions on Certain Foreign Purchases (Feb 2006) (E.o.s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).</p> | <p>(v) 52.233-3 Protest After Award (Aug 1996) (31 U.S.C. 3553).</p> <p>(vi) 52.233-4 Applicable Law for Breach of Contract Claim (Oct 2004)(Pub.L. 108-77, 108-78)</p> <p>(2) Listed below are additional clauses that apply:</p> <p>(i) 52.232-1 Payments (Apr 1984).</p> <p>(ii) 52.232-8 Discounts for Prompt Payment (Feb 2002).</p> <p>(iii) 52.232-11 Extras (Apr 1984).</p> <p>(iv) 52.232-25 Prompt Payment (Oct 2003).</p> <p>(v) 52.233-1 Disputes (Jul 2002).</p> <p>(vi) 52.244-6 Subcontracts for Commercial Items (Feb 2006).</p> <p>(vii) 52.253-1 Computer Generated Forms (Jan 1991).</p> |
|---|--|

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, when the applicable circumstances apply:

- | | |
|---|---|
| <p>(1) The clauses listed below implement provisions of law or Executive order:</p> <p>(i) 52.222-19 Child Labor-Cooperation with Authorities and Remedies (Jan 2006)(E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold).</p> <p>(ii) 52.222-20 Walsh-Healey Public Contracts Act (Dec 1996) (41 U.S.C. 35-45) (Applies to supply contracts over \$10,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).</p> <p>(iii) 52.222-35 Equal Opportunity for Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).</p> <p>(iv) 52.222-36 Affirmative Action for Workers with Disabilities (Jun 1998) (29 U.S.C. 793) (Applies to contracts over \$10,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, <i>United States</i> includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)</p> <p>(v) 52.222-37 Employment Reports on Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans (Dec 2001) (38 U.S.C. 4212) (Applies to contracts of \$25,000 or more).</p> <p>(vi) 52.222-41 Service Contract Act of 1965, As Amended (Jul 2005) (41 U.S.C. 351, et seq.) (Applies to service contracts over \$2,500 that are subject to the Service Contract Act and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer continental shelf lands.)</p> <p>(vii) 52.223-5 Pollution Prevention and Right-to-Know Information (Aug 2003) (E.O. 13148) (Applies to services performed on Federal facilities).</p> | <p>(viii) 52.225-1 Buy American Act-Supplies (June 2003) (41 U.S.C. 10a-10d) Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use within the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition--
(A) Is set aside for small business concerns; or
(B) Cannot be set aside for small business concerns (see 19.502-2), and does not exceed \$25,000.</p> <p>(ix) 52.232-33 Payment by Electronic Funds Transfer-Central Contractor Registration (Oct 2003). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the Central Contractor Registration (CCR) database as its source of EFT information.)</p> <p>(x) 52.232-34 Payment by Electronic Funds Transfer-Other than Central Contractor Registration (May 1999).(Applies when the payment will be made by EFT and the payment office does not use the CCR database as its source of EFT information.)</p> <p>(xi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006)(46 U.S.C. Appx 1241). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at 47.504(d).)</p> <p>(2) Listed below are additional clauses that may apply:</p> <p>(i) 52.209-6 Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Jan 2005) (Applies to contracts over \$25,000).</p> <p>(ii) 52.211-17 Delivery of Excess Quantities (Sept 1989) (Applies to fixed-price supply contracts).</p> <p>(iii) 52.247-29 F.o.b. Origin (Feb 2006) (Applies to supplies if delivery is f.o.b. origin).</p> <p>(iv) 52.247-34 F.o.b. Destination (Nov 1991) (Applies to supplies if delivery is f.o.b. destination).</p> |
|---|---|

(c) FAR 52.252-2, **Clauses Incorporated by Reference** (FEB 1998). This contract incorporates one or more FAR or HHSAR clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of FAR clauses may be accessed electronically at this address: <http://www.arnet.gov/far>.

- (d) **Inspection/Acceptance.** The Contractor shall tender for acceptance only those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. The Government must exercise its postacceptance rights—
- (1) Within a reasonable period of time after the defect was discovered or should have been discovered; and
 - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (e) **Excusable delays.** The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence, such as acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (f) **Termination for the Government's convenience.** The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges that the Contractor can demonstrate to the satisfaction of the Government, using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.
- (g) **Termination for cause.** The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.
- (h) **Warranty.** The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
(End of Clause)
- (i) The Contractor shall comply with the following additional Federal Acquisition Regulation (FAR) Clauses, incorporated by reference, when the applicable circumstances apply. Each reference includes abbreviated information on when the clause applies, and full prescription information is included in the FAR or HHSAR.:

52.207-5	Option to Purchase Equipment (Feb 95) (applicable in contracts involving lease with option to purchase.)	52.223-7	Notification of Radioactive Materials (Jan 97) (The contractor shall notify the Contracting Officer ____ days prior to delivery of or completion of work as specified within this clause.)
52.208-8	Required Sources for Helium and Helium Usage Data (Apr 02) (applicable in contracts involving a major helium requirement.)	52.223-10	Waste Reduction Program (Aug 00) (applicable for contractor operation of Government owned or leased facilities.)
52.208-9	Contractor Use of Mandatory Sources of Supply (Jul 04) (applicable when contractor will provide supplies for Government's use.)	52.223-11	Ozone-Depleting Substances (May 01) (The contractor shall label products with a WARNING indicating the specific substance contained in the product being furnished as specified within this clause.)
52.211-5	New Material (Aug 00)(Applicable to supply contracts)	52.223-12	Refrigeration Equipment and Air Conditioners (May 95)
52.211-16	Variation in Quantity (Apr 84) (The permissible variations for all items are "0" unless otherwise stated in the schedule.)	52.224-1	Privacy Act Notification (Apr 84)(applicable when the design, development or operation of a system of records on individuals is required)
52.213-2	Invoices (Apr 84) (For subscriptions and similar requirements where advance payment is authorized.)	52.224-2	Privacy Act (Apr 84) (applicable when the design, development or operation of a system of records on individuals is required)
52.213-3	Notice to Supplier (Apr 84) (Applicable to unpriced purchase orders.)	52.225-3	Buy-American Act--Free Trade Agreements--Israeli Trade Act (Jan 05) (Over \$25,000 and not set aside for small business, not foreign, not R&D. For other exemptions see FAR 25.401 & 25.406) Alternate I (Jan 04) (applicable if exceeds \$25,000 but is less than \$50,000) Alternate II (Jan 04) (applicable if \$50,000 or more but less than \$54,372.)
52.219-6	Notice of Total Small Business Set-Aside (Jun 03) (Applicable to total small business set-asides > \$2,500.)	52.227-14	Rights in Data--General (Jun 87)
52.222-42	Statement of Equivalent Hires (May 89) (applicable for orders > \$2,500 under the Service Contract Act.) The following class(es) of service personnel are expected to be employed under this order at the listed wage and fringe benefit rates:	52.227-17	Rights in Data--Special Works (Jun 87) (applicable when contract will compile data for the Government's internal use.)
52.223-3	Hazardous Material Identification and Material Safety Data (Jan 97), Alternate I (Jul 95) (Applicable to orders involving hazardous materials) (Offeror must include listing of materials before or at time of award.)	52.227-18	Rights in Data--Existing Works (Jun 87) (applicable when contracting exclusively for, without modification, existing audiovisual and similar work.
52.223-6	Drug-Free Workplace (May 01) (Applicable to orders with individuals)		

- 52.227-19 **Commercial Computer Software--Restricted Rights** (Jun 87) (applicable to orders for existing computer software, excluding GSA multiple award schedule contracts.)
- 52.232-23 **Assignment of Claims** (Jan 86)
- 52.237-2 **Protection of Government Buildings, Equipment, and Vegetation** (Apr 84) (Applicable to work performed at a Government site.)
- 52.237-3 **Continuity of Services** (Jan 91)
- 52.237-7 **Indemnification and Medical Liability Insurance** (Jan 97) (For nonpersonal/professional service contracts for medical/health care services)
- 52.239-1 **Privacy or Security Safeguards** (Aug 96) (applicable for contracts for information technology which require security of information including the design, development, or operation of a system of records using commercial information technology.)
- 52.242-10 **F.o.b. Origin--Government Bills of Lading or Prepaid Postage** (Apr 84) (applicable when f.o.b. origin shipments are to be made using Government bill of lading or prepaid postage.)
- 52.242-11 **F.o.b. Origin--Government Bills of Lading or Indicia Mail** (Feb 93) (applicable when f.o.b. origin shipments are to be made using Government bill of lading or indicia mail, when indicia mail has been authorized.)
- 52.242-15 **Stop Work Order** (Aug 89) (applicable when contracting by negotiation.)
- 52.242-17 **Government Delay of Work** (Apr 84)
- 52.243-1 **Changes--Fixed Price** (Aug 87) (for supplies); **Alternate I** (Apr 84) (for services other than architect-engineer or other professional services); **Alternate II** (Apr 84) (for services with supplies); **Alternate III** (Apr 84) (for professional services); **Alternate IV** (Apr 84) (for transportation services); **Alternate V** (Apr 84) (for R&D)
- 52.243-6 **Change Order Accounting** (Apr 84) (applicable for supply and Research and Development contracts of significant technical complexity.)
- 52.245-1 **Property Records** (Apr 84) (applicable when Government retains administration of Government property furnished to the contractor.)
- 52.245-4 **Government Furnished Property (Short Form)** (Jun 03)
- 52.247-1 **Commercial Bill of Lading Notations** (Apr 84) (applicable when delivery terms will be f.o.b. origin)
- 52.247-32 **F.o.b. Origin Freight Prepaid** (Feb 2006) (when delivery term is specified as F.O.B. Origin, freight prepaid)
- 52.247-35 **F.o.b. Destination with Consignee's Premises** (Apr 84) (when delivery term is specified as F.O.B. Destination within consignee's premises)
- 52.247-65 **F.o.b. Origin Prepaid Freight - Small Package Shipments** (Jan 91) (when delivery term is specified as F.O.B. origin and the Contracting Officer specifically references this clause in the purchase order)
- 52.247-66 **Returnable Cylinders** (May 94) (applicable when order involves the purchase of gas in contractor furnished cylinders) (Cylinders will be loaned to the Government at no charge for ___ days. After that the Government will pay rental of \$_____/day/cylinder as specified in this clause.)
- 52.251-1 **Government Supply Sources** (Apr 84)
- (j) The Contractor shall comply with the following Department of Health and Human Services Acquisition Regulation/Public Health Service Acquisition Regulation (HHSAR/PHSAR) (48 CFR CHAPTER 3) Clauses, incorporated by reference, when the applicable circumstances apply:
- HHS 352.223-70 **Safety and Health** (Jan 01) (applicable to services involving hazardous materials or operations)
- HHS 352.224-70 **Confidentiality of Information** (Mar 05) (applicable when contracting officer specifies its use.)
- HHS 352.270-1 **Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities** (Jan 01) (applicable when contractor will conduct meetings, conferences, or seminars open to the public or DHHS employees.)
- HHS 352.270-6 **Publication and Publicity** (Jul 91) (applicable to all contracts.)
- HHS 352.270-7 **Paperwork Reduction Act** (Jan 01) (applicable to all contracts.)
- HHS 352.270-8 **Protection of Human Subjects** (Mar 05) (applicable when human subjects will be used as research subjects)
- HHS 352.270-9 **Care of Live Vertebrate Animals** (Mar 05) (Applicable to services involving live vertebrate animals.)
- (k) The Offeror shall comply with the following Federal Acquisition Regulation (FAR) and Department of Health and Human Services Acquisition Regulation (HHSAR) provisions, incorporated by reference, when the applicable circumstances apply:
- 52.214-34 **Submission of Offers in the English Language** (Apr 91) (applicable when contract will be subject to NAFTA or contracting officer specifies its use.)
- 52.214-35 **Submission of Offers in U.S. Currency** (Apr 91) (applicable when contract will be subject to NAFTA or contracting officer specifies its use.)
- 52.223-4 **Recovered Material Certification** (Oct 97) (Certification established by order acceptance.)
- 52.237-1 **Site Visit** (Apr 84) (applicable for services to be performed on Government installations.)
- HHS 352.270-8 **Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects** (Jan 01)
- HHS 352.270-9 **Notice to Offerors of Requirement for Adequate Assurance of Protection Of Vertebrate Animal Subjects** (Sep 85)
- HHS 352.333-7001 **Choice of Law (Overseas)** (Mar 05)

Invoice and Payment Provisions

The following clause is applicable to all purchase orders: **Prompt Payment** (Oct 2003) FAR 52.232-25. Highlights of this clause and NIH implementation requirements follow:

I. Invoice Requirements

A. An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. A proper invoice is an "Original" which must include the items listed in subdivisions 1 through 9, below. If the invoice does not comply with these requirements, the Contractor will be notified of the defect within 7 days after the date the designated billing office received the invoice (3 days for meat, meat food products, or fish, and 5 days for perishable agricultural commodities, edible fats or oils) with a statement of the reasons why it is not a proper invoice. (See exceptions under II., below.) Untimely notification will be taken into account in the computation of any interest penalty owed the Contractor.

1. Name and Address of the Contractor.
2. Invoice date.
3. Contract/Purchase Order number.
4. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
5. Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms.)
6. Name and complete mailing address where payment is to be sent.
7. Name (where practicable), title, phone number and mailing address of person to be notified in event of a defective invoice.
8. Any other information or documentation required by the purchase order (such as evidence of shipment).
9. Invoice identification number. (Optional but strongly encouraged.)

B. Shipping costs will be reimbursed only if authorized by the Contract/Purchase Order. If authorized, shipping costs must be itemized. Where shipping costs exceed \$100, the invoice must be supported by a bill of lading or a paid carrier's receipt.

C. Mail an original and one copy of the itemized invoice to:

National Institutes of Health
OFM, Commercial Accounts
Room 4B-432
2115 East Jefferson St. MSC 8500
Bethesda, MD 20892-8500

For inquiries regarding payment call:

APB Chief, Accounts Payable Section, OFM,
(301) 496-6088

In order to facilitate the prompt payment of invoices for "Service Type Purchase Orders" e.g. Professional Services, Programming Services, it is recommended that the vendor submit a photocopy of the invoice to the Project Officer designated for the acquisition.

II. Invoice Payment

- A. Except as indicated in paragraph B., below, the due date for making invoice payments by the designated payment office shall be the later of the following two events:
1. The 30th day after the designated billing office has received a proper invoice.
 2. The 30th day after Government acceptance of supplies delivered or services performed.

- B. The due date for making invoice payments for meat and meat food products, perishable agricultural commodities, dairy products, and edible fats or oils, shall be in accordance with the Prompt Payment Act, as amended.

III. Interest Penalties

- A. An interest penalty shall be paid automatically, if payment is not made by the due date and the conditions listed below are met, if applicable.
1. A proper invoice was received by the designated billing office.
 2. A receiving report or other Government documentation authorizing payment was processed and there was no disagreement over quantity, quality, or contractor compliance with a term or condition.
 3. In the case of a final invoice for any balance of funds due the contractor for supplies delivered or services performed, the amount was not subject to further settlement actions between the Government and the Contractor.
- B. Determination of interest and penalties due will be made in accordance with the provisions of the Prompt Payment Act, as amended, the Contract Disputes Act, and regulations issued by the Office of Management and Budget.

YEAR 2000 COMPLIANCE

In accordance with FAR 39.106, Information Technology acquired under this contract must be Year 2000 compliant as set forth in the following clause(s):

Services Involving the Use of Information Technology (applicable when acquiring services involving the use of computer items in the performance of the requirement.)

YEAR 2000 COMPLIANCE--SERVICE INVOLVING THE USE OF INFORMATION TECHNOLOGY

The Contractor agrees that each item of hardware, software, and firmware used under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations.

(End of Clause)

Noncommercial Supply Items Warranty (applicable when acquiring custom computer items (e.g., hardware, software and systems) and the requirement will not continue to exist after December 31, 1999.)

YEAR 2000 WARRANTY--NONCOMMERCIAL SUPPLY ITEMS

The contractor warrants that each noncommercial item of hardware, software, and firmware delivered or developed under this contract and listed below shall be able to accurately process date data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations, when used in accordance with the item documentation provided by the contractor, provided that all listed or unlisted items (e.g., hardware, software and firmware) used in combination with such listed item properly exchange date data with it. If the contract requires that specific listed items must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed items as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of any general warranty provisions of this contract provided that notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to the Government under this warranty shall include repair or replacement of any listed item whose noncompliance is discovered and made known to the contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this contract with respect to defects other than Year 2000 performance.

YEAR 2000 COMPLIANT ITEMS

(end of clause)

Commercial Supply Products Warranty (applicable when acquiring Year 2000 Compliant Software, Hardware and Systems comprised of COMMERCIAL INFORMATION TECHNOLOGY PRODUCTS and the requirement will not continue to exist after December 31, 1999.)

YEAR 2000 WARRANTY--COMMERCIAL SUPPLY ITEMS

The contractor warrants that each hardware, software and firmware product delivered under this contract and listed below shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations, when used in accordance with the product documentation provided by the contractor, provided that all listed or unlisted products (e.g., hardware, software, firmware) used in combination with such listed product properly exchange date data with it. If the contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the contractor's standard commercial warranty or warranties contained in this contract, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Government under this warranty shall include repair or replacement of any listed product whose non-compliance is discovered and made known to the contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this contract with respect to defects other than Year 2000 performance.

YEAR 2000 COMPLIANT ITEMS

(end of clause)

Energy Star Requirements *(Applicable for direct acquisitions of energy-using products or services (including design, construction, renovation or maintenance of a public building) involving the provision of energy-using products.)*

Executive Order 13123, "Greening the Government Through Efficient Energy Management" and FAR 23.203 require that when Federal Agencies acquire energy using products, they select, where life-cycle cost-effective, and available, ENERGY STAR® or other energy efficient products.

Unless the Contracting Officer determines otherwise, all energy-using products acquired under this contract must be either an ENERGY STAR® or other energy efficient product designated by the Department of Energy's Federal Energy Management Program (FEMP).

For more information about ENERGY STAR® see <http://www.energystar.gov/>

For more information about FEMP see <http://www.eere.energy.gov/>